

GAHC010066602023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1782/2023

PRANJAL KAKATI
S/O. LATE MRIGEN KAKATI,
R/O. VILLAGE NO. 2, GALIBHATI, BARPETA, ASSAM, PIN- 781301.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
WATER RESOURCES DEPARTMENT,
ASSAM SASCHIVALAYA, DISPUR,
GUWAHATI-6.

2:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
CHANDMARI
GUWAHATI-3
DISTRICT- KAMRUP
ASSAM.

3:THE ADDITIONAL CHIEF ENGINEER
LOWER ASSAM ZONE
WATER RESOURCES DEPARTMENT
CHANDMARI
GUWAHATI
ASSAM
PIN- 781003.

4:THE EXECUTIVE ENGINEER
BARPETA WATER RESOURCES DEPARTMENT
DISTRICT- BARPETA (ASSAM)
PIN- 781301.

5:THE SUPERINTENDING ENGINEER

MUKALMUWA PROTECTION CIRCLE
WATER RESOURCES DEPARTMENT
DISTRICT- BARPETA
ASSAM
PIN- 781301

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

03-08-2023

Heard Mr. H. Bezbaruah, learned counsel for the petitioner and Ms. J. Das, learned Standing Counsel, Water Resource Department for all the respondents.

2. The petitioner is a Section Assistant in the office of the Executive Engineer, Water Resource Division, Barpeta appointed on compassionate ground, was sent on deputation in the year 2018 to the Election Branch of the office of the Deputy Commissioner, Barpeta vide order dated 06.10.2018 for Special Summary Revision of Photo Electoral Roll, 2019 and conduct of Pre-Poll activities of the Lok Sabha Election, 2019.

3. While he was on deputation in the Election Branch of the office of the Deputy Commissioner, Barpeta, the petitioner was arrested on 03.04.2021 in connection with Barpeta P.S. Case No.760/2021 under Section 457/380 IPC.

4. Later, vide order dated 05.07.2021, passed in BA No. 1296/2021, this Court granted bail to the petitioner in said Barpeta P.S. Case No.760/2021.

5. As the petitioner was arrested in said Barpeta P.S. Case No.760/2021 on 03.04.2021 and kept in judicial custody for more than 48 hours, the Executive Engineer, Water Resource

Division, Barpeta in exercise of the powers conferred under Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964, vide order No. 481 dated 04.05.2021 placed the petitioner under suspension w.e.f., the date of his arrest i.e., 03.04.2021 in said Barpeta P.S. Case No.760/2021 until his acquittal in said Police Case granting him the benefit of subsistence allowance initially @ 50% for three months and thereafter @ 75%, which the petitioner is receiving.

6. Thereafter, the Executive Engineer, Water Resource Division, Barpeta vide No.BWRD/PP-58/Pt-I/2021/3 dated 09.06.2021 issued show cause notice to the petitioner under Rule 9 of said 1964 Rules read with Article 311 of the Constitution of India asking him to file his reply as to why penalties described in Rule 7 of said 1964 Rules and Clause 314 of the Assam Public Works Department Code should not be inflicted upon him specifying the relevant charges based on the statement of allegations received from the Officer-in-Charge of Barpeta Police Station enclosing the Articles of charges, list of documents etc.

7. The petitioner after obtaining bail submitted his reply on 09.06.2021.

8. After the enquiry the concerned Disciplinary Authority i.e., the Executive Engineer, Water Resource Division, Barpeta came to the conclusion that since the petitioner is involved in a serious criminal offence that is beyond the scope of his office to find out a case against the petitioner, who is presently under suspension and accordingly, decided to continue with the suspension of the petitioner until the final enquiry of the police authority and the final judgment to be passed by the Court of law with regard to said Barpeta police case.

9. It is to be noted herein that police after completion of investigation of said Barpeta P.S. Case No.760/2021 submitted its charge-sheet on 17.06.2021 and the matter is pending for adjudication before the criminal Court.

10. Petitioner earlier preferred a writ petition, being WP(C) No. 1429/2022 against his said suspension and the Court vide order dated 21.11.2022 disposed of the said writ petition of the petitioner directing the Executive Engineer, Water Resource Division, Barpeta to pass a reasoned order in terms of the proviso to Rule 6(2) of the said 1964 Rules. Pursuant to the same, the Executive Engineer, Water Resource Division, Barpeta vide Order No.525(F) dated 27.01.2023 passed a speaking order and accordingly, decided to continue with the suspension

of the petitioner until the final verdict of his acquittal is pronounced by the competent Court of law.

11. Being aggrieved with the said order of the Executive Engineer, Water Resource Division, Barpeta dated 27.01.2023 to keep the petitioner under suspension under Rule 6 of said 1964 Rules, the petitioner has preferred this writ petition.

12. Assam Services (Discipline and Appeal) Rules, 1964 that came into force w.e.f., 05.11.1964 is a statutory Rule under Article 309 of the Constitution of India.

13. Rule 6 of said 1964 Rules pertains to suspension of a Government employee.

14. Rule 13 of said 1964 Rules relates to appeal against an order made by an authority where Rule 13 (a) provides for preferring an appeal against any such order of suspension issued under Rule 6 of said 1964 Rules.

15. Law is well settled that when the statute provides for a particular procedure, a thing to be done in a particular way, then it has to be followed as prescribed and is required to be done in that manner and in no other manner and following any other course that cannot be permitted to act in contravention of the same. Where a statute requires to do certain things in a certain way, the thing must be done in that way and not contrary to it at all and other methods all mode of performance are impliedly and necessarily forbidden.

16. Since the said 1964 Rules is a statutory Rule and Rules 13 and 14 of the said 1964 Rules provide for an appeal against an order of suspension made under Rule 6 of said 1964 Rules, having statutory force, this Court is not inclined to interfere with the impugned Order No.525(F) dated 27.01.2023 issued by the Executive Engineer, Water Resource Division, Barpeta suspending the petitioner from service under Rule 6 of the Assam Services (Discipline and Appeal) Rules, 1964. Moreover, there is an efficacious statutory remedy available to the petitioner pertaining to his approach against his said suspension order dated 27.01.2023 preferring a statutory appeal before the appropriate forum, i.e., the appellate authority as prescribed by the said 1964 Rules.

17. In view of the above, this writ petition, being not maintainable under the law, stands dismissed.

18. However, the petitioner may approach the appropriate forum as provided under Rule 14 of the Assam Service (Discipline and Appeal) Rules, 1964 for redressal of his grievances, if any.

JUDGE

Comparing Assistant